

GOVERNMENT CODE

TITLE 4. EXECUTIVE BRANCH

SUBTITLE B. LAW ENFORCEMENT AND PUBLIC PROTECTION

CHAPTER 418. EMERGENCY MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 418.001. SHORT TITLE. This chapter may be cited as the Texas Disaster Act of 1975.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 418.002. PURPOSES. The purposes of this chapter are to:

(1) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action;

(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

(3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, the judicial branch of state government, and local governments in prevention of, preparation for, response to, and recovery from disasters;

(5) authorize and provide for cooperation in disaster mitigation, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster mitigation, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign

activities in which the state and its political subdivisions may participate;

(7) provide an emergency management system embodying all aspects of predisaster preparedness and postdisaster response;

(8) assist in mitigation of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use; and

(9) provide the authority and mechanism to respond to an energy emergency.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1997, 75th Leg., ch. 992, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 5.03, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1281 (H.B. 1861), Sec. 3, eff. June 19, 2009.

Sec. 418.108. DECLARATION OF LOCAL DISASTER. (a) Except as provided by Subsection (e), the presiding officer of the governing body of a political subdivision may declare a local state of disaster.

(b) A declaration of local disaster may not be continued or renewed for a period of more than seven days except with the consent of the governing body of the political subdivision or the joint board as provided by Subsection (e), as applicable.

(c) An order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary, the county clerk, or the joint board's official records, as applicable.

(d) A declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration. The appropriate preparedness and response aspects of the plans are activated as provided in the plans and take effect immediately after the local state of disaster is declared.

(e) The chief administrative officer of a joint board has exclusive authority to declare that a local state of disaster exists within the boundaries of an airport operated or controlled by the joint board, regardless of whether the airport is located in or outside the boundaries of a political subdivision.

(f) The county judge or the mayor of a municipality may order the evacuation of all or part of the population from a stricken or threatened area under the jurisdiction and authority of the county judge or mayor if the county judge or mayor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.

(g) The county judge or the mayor of a municipality may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area.

(h) For purposes of Subsections (f) and (g):

(1) the jurisdiction and authority of the county judge includes the incorporated and unincorporated areas of the county; and

(2) to the extent of a conflict between decisions of the county judge and the mayor, the decision of the county judge prevails.

(i) A declaration under this section may include a restriction that exceeds a restriction authorized by Section 352.051, Local Government Code. A restriction that exceeds a

restriction authorized by Section 352.051, Local Government Code, is effective only:

- (1) for 60 hours unless extended by the governor; and
- (2) if the county judge requests the governor to grant an extension of the restriction.

LOCAL GOVERNMENT CODE  
SUBCHAPTER C. FIREWORKS

Sec. 352.051. REGULATION OF RESTRICTED FIREWORKS. (a) For the purposes of this section the following definitions shall apply:

(1) "Restricted fireworks" means only those items classified under 49 C.F.R. Sec. 173.100(r)(2) (10-1-86 edition), as "skyrockets with sticks" and "missiles with fins".

(2) "Drought conditions" means the existence immediately preceding or during the fireworks season of a Keetch-Byram Drought Index of 575 or greater.

(b)(1) The Texas Forest Service in the ordinary course of its activities shall determine whether drought conditions, as defined under Subsection (a)(2), exist on average in any county requesting such a determination. The Texas Forest Service shall make available the measurement index guidelines used to determine whether drought conditions exist in a particular area. Following any determination that such drought conditions exist, the Texas Forest Service shall notify said county or counties when such drought conditions no longer exist. The Texas Forest Service shall make its services available each day during the Fourth of July and December fireworks seasons to respond to the request of any county for a determination whether drought conditions exist on average in the county.

(2) The Texas Forest Service shall be allowed to take such donations of equipment or funds as necessary to aid in the carrying out of this section.

(c) Upon a determination under this section that drought conditions exist on average in a specified county, the commissioners court of the county by order may prohibit or restrict the sale or use of restricted fireworks in the unincorporated area of the county. In addition, during the December fireworks season, the commissioners court of a county by order may restrict or prohibit the sale or use of restricted fireworks in specified areas when conditions on rural acreage in

the county not under cultivation for a period of at least 12 months are determined to be extremely hazardous for the danger of fire because of high grass or dry vegetation.

(d) To facilitate compliance with an order adopted under Subsection (c), the order must be adopted before:

(1) April 25 of each year for the Cinco de Mayo fireworks season;

(2) June 15 of each year for the Fourth of July fireworks season; and

(3) December 15 of each year for each December fireworks season.

(e) An order issued under this section shall expire upon determination as provided under Subsection (b) that such drought conditions no longer exist.

(f) When a county issues an order restricting or prohibiting the sale or use of restricted fireworks under this section, the county may designate one or more areas of appropriate size and accessibility in the county as safe areas where the use of restricted fireworks is not prohibited, and the legislature encourages a county to designate such an area for that purpose. The safe area may be provided by the county, a municipality within the county, or an individual, business, or corporation. A safe area may be designated in and provided in the geographic area of the regulatory jurisdiction of a municipality if the activity conducted in the safe area is authorized by general law or a municipal regulation or ordinance. An area is considered safe if adequate public safety and fire protection services are provided to the area. A county, municipality, individual, business, or corporation is not liable for injuries or damages resulting from the designation, maintenance, or use of the safe area.

(g) A person selling any type of fireworks, including restricted fireworks, in a county that has adopted an order under Subsection (c) shall, at every location at which the person sells fireworks in the county, provide reasonable notice

of the order and reasonable notice of any location designated under Subsection (f) as a safe area.

(h) An affected party is entitled to injunctive relief to prevent the violation or threatened violation of a requirement or prohibition established by an order adopted under this section.

(i) A person commits an offense if the person knowingly or intentionally violates a prohibition established by an order issued under this section. An offense under this subsection is a Class C misdemeanor.

(j) A civil action against a county based on the county's actions under this section must be brought in the appropriate court in that county.

Added by Acts 1991, 72nd Leg., ch. 865, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 500, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1399, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1244, Sec. 1 to 3, eff. Sept. 1, 1999. Renumbered from Sec. 240.904 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.004, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 7, eff. June 15, 2007.